

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**FILED**

**2021 JAN 15 AM 11:27**

**CLERK  
U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re: ) Chapter 11  
W. R. Grace & Co, et al. ) Case No. 01-01139 (AMC)  
Reorganized Debtors. ) (Jointly Administered)  
 ) Hearing date: March 4, 2021, 12:00 p.m.  
 ) Reply Deadline: Feb 5, 2021, 4:00 p.m.  
 ) Docket Nos. 33154 and 33163

**NOTICE OF MOTION AND MOTION AND SUPPORTING  
DECLARATION OF GARY S. SMOLKER ("SMOLKER") FOR LEAVE  
TO FILE THE FOLLOWING ADDITIONAL PLEADINGS AND EXHIBITS  
IN OPPOSITION TO GRACE'S PENDING MOTION FOR SUMMARY  
JUDGEMENT: (A) LIST OF ADDITIONAL EXHIBITS AND  
DOCUMENTS SPECIFIED IN THAT LIST (B) LIST OF LEGAL ISSUES  
AND DISCUSSION OF SAME; (C) ADDITIONAL MEMORANDUM OF  
POINTS AND AUTHORITIES; (D) ADDITIONAL DECLARATION OF  
GARY SMOLKER. THIS MOTION IS BROUGHT PURSUANT TO RULE  
56 (d), Rule 6 (b)(1)(B), Rule 6 (c)(1) and Rule 6 (c)(2) of Federal Rules of  
Civil Procedure**

Please take notice that this Motion of SMOLKER for Leave to File  
Additional Pleadings and Exhibits in Opposition to W.R. Grace & Co.,  
Reorganized Debtor's ("GRACE'S") Pending Motion for Summary Judgment  
will be heard telephonically by the Honorable Ashely M. Chan, United States  
Bankruptcy Judge 12:00 p.m. (ET) on March 4, 2021.

Response to the relief requested in this Motion, if any, must in writing and  
be filed in with the United States Bankruptcy Court for the District of Delaware,  
824 Market Street, Wilmington, Delaware 19801 no later than 4:00 p.m. (Eastern  
Time) on February 5, 2021. At the same time you must serve a copy of the

objections or responses, if any, upon Claimant Gary S. Smolker, In Pro Per, 16055 Ventura Blvd., Suite 525, Encino, California 91436-2609.

If no objections are timely filed and served in accordance with this notice, the Bankruptcy Court (Judge Chan) may grant the relief requested by this motion without further notice or hearing.

A telephonic hearing will be held on this motion and the objections and reply before the Honorable Ashely M. Chan on March 4, 2021 at 12:00 P.M. Eastern Time. Instructions will be provided.

Dated: January 14, 2021

Gary S. Smolker, Claimant in Pro Per  
Cell Phone: 1-310-749-9735  
Office phone: 1-818-788-7290  
16055 Ventura Blvd., Suite 525  
Encino, CA. 91436-2609



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Gary S. Smolker, Claimant in Pro Per

**MOTION AND MEMORANDUM OF POINTS AND AUTHORITRES IN  
SUPPORT OF MOTION FOR LEAVE TO FILE ADDITIONAL  
PLEADINGS AND EXHIBITS AFTER THE TIME HAS EXPIRED**

When an act may or must be done within a specified time, the court may, for good cause, extend the time on motion made after the time has expired if the party failed to act because of excusable neglect. Rule 6 (b) (1) (B) of Federal Rules of Civil Procedure.

If a nonmovant shows by declaration that, for specified reasons, it cannot present facts essential to justify its opposition to a motion for summary judgment the court may: (1) defer considering the motion or deny if; (2) allow time to obtain affidavits or declarations or to take discovery or (3) issue any other appropriate order.

SMOLKER does not practice law in the federal courts or in the bankruptcy court. When GRACE filed its motion for summary judgment SMOLKER was not

familiar with the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Bankruptcy Court Rules and General Orders of the United States, Bankruptcy Court, for the District of Delaware, the United States Bankruptcy Code, or Title 18 or Title 28 of the United States Code.

SMOLKER is a 75 years old male.

SMOLKER is a heart patient. SMOLKER had a myocardial infraction on September 13, 2013. Three stents were installed in two arteries.

SMOLKER has high blood pressure.

On April 26, 2019 and on September 17, 2020 SMOLKER had a broken blood vessel in his left eye.

SMOLKER'S blood pressure was measured to be 165/103 at the time he was examined by eye doctor Dr. Ron Kandavel, MD on April 26, 2019.

SMOLKER'S blood pressure was measured to be 170/107 at the time SMOLKER was examined by eye doctor Dr. Lisa Lintz, MD on September 17, 2020.

SMOLKER'S blood pressure was measured to be 198/120 on January 7, 2021, at the time he was examined by pulmonologist Gerald M. Markovitz, MD.

SMOLKER has recently been diagnosed as having moderately severe sleep apnea and damaged lungs.

The membrane separating the alveoli and capillaries has thickened due to irritation which makes it difficult for gas exchange to pass between alveoli and the capillaries.

SMOLKER is being treated for his breathing problems resulting from damaged lungs by pulmonologist Dr. Markovitz, MD.

SMOLKER attributes his current breathing problems and damaged lungs directly to having come into unprotected contact with GRACE'S pesticide product Syloid 244..

As a result of having damaged lungs SMOLKER has shortness of breath, and irregular sleep habits (sleep apnea). Sometimes SMOLKER cannot sleep for more than two hours before getting up.

As a result of his shortness of breath and inability to sleep throughout the night SMOLKER'S ability and capacity to work effectively for long hours is severely limited.

Attached as Exhibit "C" to the August 15, 2020 declaration of SMOLKER is a copy of a May 1, 2019 CT of Chest taken of SMOLKER'S chest which reveals damage to SMOLKER'S lungs.

Attached as Exhibit "D" to the August 15, 2020 declaration of SMOLKER is a copy of a July 23, 2020 CT of Chest taken of SMOLKER'S chest which reveals damage to SMOLKER'S lungs.

A Sleep Study Test was performed on me on July 19, 2020. The study concludes I have sleep apnea, low saturated oxygen content in my blood, and I have suspected pathological breathing disorder.

My pulmonologist has ordered more tests to be performed on me.

On or about GRACE filed a 755 page in length Motion for Summary Judgment (MOTION) and notified Claimant SMOLKER that SMOLKER must file SMOLKER'S responses if any with the Bankruptcy Court no later than 4:00 p.m. (prevailing Eastern Time) on August 2020.

GRACE also informed SMOLKER that SMOLKER must also serve copies of SMOLKER'S response to GRACE'S 755 page motion on 17 lawyers in 15 law firms.

It was impossible for SMOLKER to review all 755 pages of GRACE'S MOTION in the time specified.

Additionally, it was not possible for SMOLKER to review relevant federal law and/or relevant bankruptcy law which SMOLKER needed to review in order to meaningfully respond to GRACE'S MOTION.

Nevertheless, on August 15, 2020 SMOLKER served responses and objections to GRACE'S motion dated August 3, 2020, and gave Federal Express an original copy of his responses to deliver the next day to the U.S. Bankruptcy Court in Wilmington, Delaware via Federal Express Overnight Mail.

During the Los Angeles Superior Court Action a Motion for Summary Judgment was brought by GRACE. That motion was denied.

In his Declaration dated August 15, 2020 attached to his response dated August 16, 2020, SMOLKER states the important fact "that GRACE had made and lost a motion for summary judgment in the trial court."

SMOLKER did not have time to find a court the Trial Court Minute Order dated 12/30/00 which states that GRACE lost its motion for summary judgment prior to serving and filing his August 15, 2020 declaration..

Attached as Exhibit "2" to the Declaration of SMOLKER dated December 29, 2020 sent by Federal Express Overnight mail to be filed with the Bankruptcy Court on December 30, 2020, is a copy of the Trial Court's Two Page Minute Order dated 12/13/00 and attached 10 page "Tentative Rulings."

Those document stat that summary judgment is denied as to the motions of cross-defendants W.R Grace & Company and Grace Davison, Home Saving Termite Control, and Morris and that SYLOID 244 ***"is not and never was registered with the EPA or the California Department of Pesticide..."*** (See page 2 of Tentative Rulings.)

***"1. Federal Registration: Grace's Syloid 244 has never been registered with the EPA. There is no FDA-approved label for Syloid 244."*** (See Page 6 of Tentative Rulings.)

***"2. State Registration: "...at the time when Grace's product Syloid 244 was applied to Smolker's residence... Syloid 244 was not state-registered."***

The Trial Court further found (see page 9 of its "Tentative Ruling"):

***"Grace provided the product to Termite Control with a label containing a health warning against its use in a manner that would expose person to breathing the product or making skin contact with it. The Woodcock declaration states, in***

*essence, that Termite's Control's method of application of the Syloid 244 product would or could cause aspiration or other contact with the desiccant."*

*"How can Termite Control, or Grace for that matter, argue that the EPA determined that Syloid 244, or a closely similar product, is safe for an application that arguable exposes homeowners to unprotected contact with the product when Grace's own label for Syloid 244 warns against unprotected exposure to Syloid 244?"*

While preparing his Declaration dated December 29, 2020, in further response to GRACE'S MOTION, SMOLKER did not have time to discuss the above material facts, or to prepare a List of Disputed Facts, or to prepare a Memorandum of Points and Authorities which discusses facts, or to prepare and file objections to the testimony set forth the Declaration of Rosemary Lewis' in support of GRACE's MOTION.

In his Declaration in response to GRACE'S MOTION, dated August 16, 2020, SMOLKER attached the Declaration of Peter J. Novak.

The testimony set forth in the Declaration of Peter J. Novak states that the application of Syloid 244 by the method used by Home Saving Termite Control, Inc. (TERMITE) is ultra-dangerous.

SMOLKER has not had time to document in a Memorandum of Points and Authorities or in a Statement of Uncontested Facts or in a Statement of Contested fact evidence that supports the fact that application of SYLOID 244 by the method used by the applicator Home Saving Termite Control, Inc. (TERMITE) is ultra-dangerous, is reckless, and is not safe.

A jury trial was conducted in the trial court of SMOLKER'S action against TERMITE.

Among the Exhibits SMOLKER asks leave to file in opposition to GRACE'S motion for summary judgment is a copy of Trial Court Jury Trial Minute Orders and copies of two Jury Trial Exhibits.

The Minute Orders state that (a) SMOLKER'S action against TERMITE went to trial, (b) state which witnesses testified for cross-complainants SMOLKER

and his then wife Alice Graham during trial, state that TERMITE brought a motion for mistrial that was heard, argued and denied, and that days later the trial judge declared a mistrial because if the trial continued it would interfere with his Christmas holiday plans.

The list of expert witness called by SMOLKER who were sworn and testified during the trial is very impressive. The witnesses SMOLKER called who testified included government employees who filed notices of violation and cease and desist orders against TERMITE for illegally using GRACE'S pesticide product Syloid 244.

SMOLKER'S medical and toxicological expert witnesses who were sworn and testified during the trial are very impressive people.

For example, SMOLKER'S primary treating physician, Dr. Nathan Brautbar, M.D. was the lead expert witness for activist Erin Brockovich. Dr. Brautbar testified that the injuries SMOLKER complains of were caused by exposure to Syloid 244.

In the last month or so, Los Angeles has become a hot spot for the spread of Covid 19.

The Covid 19 infection rate, the Covid 19 hospitalization rate, the capacity of ICUs in Los Angeles to treat Covid 19 patients is constantly in the news.

It has been reported that some hospitals in Los Angeles are over capacity, they have no available ICU beds and they turn away ambulances.

Various emergency lock down order issued by the Governor and by City and County officials state that people in Los Angeles should not leave home unless they have to. I have to go to my office to have access to my legal files.

The Covid 19 news is very disturbing, and has causes me to be in a constant state of anxiety.

Rule 56 (a) of the Federal Rules of Civil Procedure states that a party may move for summary judgment, by identifying each claim or defense, on which summary judgment is sought. GRACE did not do that in GRACE'S MOTION.

Rule 56 (c) states that a party asserting a fact cannot be disputed must support the assertion on a declaration made on personal knowledge, set out facts that would be admissible in evidence, and show that the declarant is competent to testify on the matters stated. GRACE did not do that.

I will challenge statements made in the declaration of Rosemary S. Lewis dated August 1, 2020 in support of GRACE'S MOTION.

I am working on a deadline to file this motion with the Court by January 15, 2021. I was not given time to prepare and file objections to facts asserted in Ms. Lewis' declaration.

I asked for another week to file additional pleadings and exhibits, and to maintain the same hearing date for GRACE'S MOTION.

My request was denied by GRACE.

Instead GRACE asked for a status conference to discuss my request. I told GRACE a status conference was the equivalent to an ex parte motion where no papers are filed and that I was opposed to having a status conference.

The Court held a status conference on January 8, 2021. In violation of ABA Model Rules of Professional Conduct applicable to ex parte hearings GRACE'S attorneys did not inform the court of my position on GRACE'S motion.

GRACE's attorneys have received pleadings I filed in the state court action which set forth my position on issues of vital materiality to GRACE'S MOTION which GRACE did not reveal to the Court.

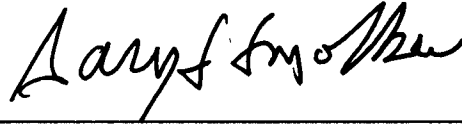
WHEREFORE, I request that the court defer hearing GRACE'S MOTION or deny GRACE'S MOTION or give me more time to obtain declarations and exhibits and to take discovery and to write up my list of issues to be decided, my objections to the Rosemarie Lewis Declaration, my Statement of Facts and my Memorandum of Points and Authorities in opposition to GRACE'S Motion.

I will endeavor to supply that information to the court in the time I have to respond to GRACE'S opposition to this motion.



Dated: January 14, 2021

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16055 Ventura Blvd., Suite 525  
Encino. CA. 91436-2609



Gary S. Smolker, Claimant in Pro Per

DECLARATION OF GARY S. SMOLKER IN SUPPORT OF MOTION FOR  
LEAVE TO FILE ADDITIONAL PLEADINGS AND EXHIBITS IN  
OPPOSITION TO GRACE'S MOTION FOR SUMMARY JUDGMENT

I, Gary S. Smolker, declare:

I make each of the following statements on the basis of my own personal knowledge.

I am a 75 year old male who has a heart condition, high blood pressure, damaged lungs, difficulty breathing, low amount of stamina, and inability to work long hours for a sustained period of time.

I had a myocardial infraction (a heart attack) on September 13, 2013. Three stents were installed in two blocked arteries.

On April 26, 2019 my blood pressure was measured while I was in an eye doctor's office because a blood vessel had broken in my left eye. My blood pressure was measured as being 165/103 at that time.

On September 17, 2020 my blood pressure was measured while I was in an eye doctor's office because a blood vessel had broken in my left eye. My blood pressure was measured as being 170/107 at that time.

On January 7, 2021 my blood pressure was measured when I was in a pulmonologist's office to consult about my damaged lungs, irregular sleep, sleep

apnea, and breathing problems. My blood pressure was measured as being 198/120 at that time.

I have trouble sleeping. Sometimes when I go to sleep at night I am not able to sleep longer than two or three hours at a time.

I live in Los Angeles, California. The Covid 19 pandemic is very stressful to me. The hospital system has been reported to be overstressed in Los Angeles County.

Lock down orders have been issued by the Governor of the State of California, the Board of Supervisors of the County of Los Angeles, and the Mayor of the City of Los Angeles – to the effect that everyone should stay home unless they have to go out.

Out of necessity, I have gone to my office to work on this case.

The number of pleadings that must be found reviewed and copied for presentation to the court and to GRACE'S attorneys in order to present this court with an accurate picture of what this case is about is enormous.

I have been recently told that I filed with the court and served on opposition counsel over 700 pages of documents consisting of my declaration dated December 29, 2020 and 17 exhibits and miscellaneous code sections in opposition to GRACE'S motion weighing approximately 5 pounds.

Do my physical condition I lacked stamina to write up a "Statement of Undisputed Facts", a "Statement of Facts in Dispute", "Legal Issues", "Objections to Rosemary Lewis' Declaration" and a comprehensive Memorandum of Points & Authorities tying everything together.

Rosemary Lewis did not state that the facts she set forth were based on her own personal knowledge, she quoted "hearsay" statements in unpublished Court of Appeal opinions which give a false picture of what this case is about and are not true.

GRACE failed to deal with my affirmative defense of UNCLEAN HANDS in GRACE'S MOTION.

GRACE failed to accurately discuss statute of limitations issues and the issue of whether I failed to bring the civil court action to trial in the allotted time.

It is my contention that the Court of Appeal decision is clearly wrong on its face.

I need time to discuss all of the above.

The attached List of Legal Issues is incomplete. I will complete it when or before I file my response to GRACE'S opposition to this motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 14, 2021 at Encino, California.



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Gary S. Smolker  
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Encino, CA. 91436

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Cell phone: 1-310-749-9735  
Office phone: 1-818-7290

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Chapter 11  
W. R. Grace & Co, et al. ) Case No. 01-01139 (AMC)  
Reorganized Debtors. ) (Jointly Administered)  
 ) Hearing date: March 4, 2021, 12:00 p.m.  
 ) Reply Deadline: Feb 5, 2021, 4:00 p.m.  
 ) Docket Nos. 33154 and 33163

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**GARY S. SMOLKER’S (“SMOLKER’S”) LIST OF LEGAL ISSUES  
SMOLKER SEEKS LEAVE TO FILE IN SMOLKER’S MOTION FOR  
LEAVE TO FILE ADDITIONAL PLEADINGS AND EXIBITS IN  
OPPOSITION TO GRACE’S MOTION FOR SUMMARY JUDGMENT  
PURSUANT TO RULE 56 (d), Rule 6 (b)(1)(B), Rule 6 (c)(1) and Rule 6 (c)(2)  
of Federal Rules of Civil Procedure**

**LEGAL ISSUE NUMBER ONE**

Does GRACE come into this court with unclean hands?

**Legal Issue Number One Subpart A:**

What is the legal effect of W.R. Grace & Co., Reorganized Debtor ‘s (“GRACE’S”) illegal activity: illegally manufacturing, illegally selling, and illegally delivering an unregistered pesticide product known as SYLOID 244 for an illegal use to Home Saving Termite Control, Inc. (TERMITE).

TERMITE illegally applied in SMOLKER’S home SYLOID 244 which was illegally sold and delivered to it by GRACE.

The SYLOID 244 delivered by GRACE to TERMITE was delivered to TERMITE for an illegal use as use as a pesticide to eradicate termites in SMOLKER’S home.

GRACE and TERMITE knew or should have known that the way SYLOID 244 was to be applied by TERMITE in SMOLKER'S home would result in everyone living in SMOLKER'S home coming into unprotected contact with SYLOID 244.

GRACE and TERMITE knew that coming into unprotected contact with SYLOID 244 would cause everyone living in SMOLKER'S home to suffer personal injuries, emotional distress and damage to their property.

SMOLKER, SMOLKER'S wife and SMOLKER'S two young daughters were living in SMOLKER'S home at the time SYLOID 244 sold by GRACE to TERMITE was applied by TERMITE in SMOLKER'S home.

The illegal manufacture, illegal sale and illegal delivery of SYLOID 244 by GRACE to TERMITE foreseeably and directly and proximately caused physical injury, mental injury, emotional damage, and property damage to Claimant Gary SMOLKER, to SMOLKER'S wife, and to SMOLKER'S two young daughters!

**Answer to Legal Issue One Subpart A:**

The illegal manufacture, the illegal sale and the illegal delivery of SYLOID 244 to TERMITE for an illegal use as a pesticide to eradicate termites constitute UNCLEAR HANDS on the part of GRACE.

As a result of GRACE being guilty of UNCLEAR HANDS this court must not entertain or grant GRACE'S motion for summary judgment.

**Legal authority:**

**Legal Issue One Subpart B:** What is the legal effect of GRACE obtaining a LIFT STAY ORDER signed by Judge Carey on March 4, 2014 by misleading Judge Carey and SMOLKER?

**Answer to Legal Issue One Subpart B:** GRACE comes into this court with unclean hands.

**Legal Issue One Subpart C:** What is the legal effect of GRACE misleading this court (Honorable Ashely M. Chan, US Bankruptcy Judge, presiding) by not mentioning in GRACE'S pending Motion for Summary Judgment that SMOLKER contends that GRACE is guilty of unclean hands?

**Answer to Legal Issue One Subpart C:** GRACE comes into this court with unclean hands

**Legal Issue One Subpart D:** What is the legal effect of GRACE obtaining a Lift Stay Order in the Bankruptcy Case signed by Judge Carey on March 4, 2014 by committing a fraud on the Bankruptcy Court?

**Answer to Legal Issue One Subpart D:** Grace is guilty of unclean hands.

**Legal Authority:**

**Legal Issue One Subpart E:** What is the legal effect of GRACE failing to inform Judge Carey that SYLOID 244 is a dangerous toxic substance when used to eradicate termites.

**Answer to Legal Issue One Subpart E:** GRACE is guilty of unclean hands.

**Legal Issue One Subpart F:** What is the legal effect of GRACE failing to inform this court that the SYLOID 244 applying in SMOLKER'S home is a dangerous toxic substance?

**Answer to Legal Issue One Subpart G:** GRACE is guilty of unclean hands.

**LEGAL ISSUE NUMBER TWO**

Was it against the law for GRACE to manufacture, or to sell, and/or to deliver its unregistered pesticide product SYLOID 244 to TERMITE for use as a pesticide?

**Answer to Legal Issue Number Two:** Yes.

**Legal authority:**

The following California Food & Agriculture Code sections state that it is illegal to manufacture, store, use, sell, transport, handle or dispose of an unregistered pesticide in the State of California: 12991, 12993, and 12996.

*California Food & Agriculture Code* section 12991 [Unlawful acts] provides:

*“It is unlawful for any person by himself, or through another, to do any of the following:*

*“(e) For any person to use, store, transport, handle, or dispose of any economic poison.... except in compliance with rules and regulations of the director.”*

*California Food & Agriculture Code* section 12993 [Unlicensed manufacture or sale] provides:

*“It is unlawful for any person to manufacture, deliver or sell any economic poison ... which is not registered pursuant to this chapter.”*

*California Food & Agriculture Code* section 12996( a) [Violations of provisions of division or regulation relating to pesticides; misdemeanor] provides:

*“Every person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a provision of this division related to pesticides is guilty of a misdemeanor...”*

**Legal Issue Number Three:** Is Syloid 244 a dangerous toxic substance when used as a pesticide to eradicate termites?

SYLOID 244 is a highly engineering porous desiccant dust. It is capable of absorbing moisture and/or oils three times its weight. It consists of three micron particles of amorphous silicon dioxide.

Amorphous silicon dioxide is sometimes called amorphous silica gel or amorphous silica dust.

SYLOID 244 is supposed to kill termites by dehydrating termites on contact.

Three micron particles of amorphous silicon dioxide (SYLOID 244) are not visible to the naked eye.

SYLOID 244 can do horrible damage

**Legal Issue Number 4:**

What are the applicable statute of limitations?

I WILL FILL IN THE BLANKS WHEN I FILE MY REPLY TO GRACE'S  
OPPOSITION TO MY MOTION

Dated: January 14, 2021 Claimant Gary S. Smolker, In Pro Per

A handwritten signature in black ink that reads "Gary S. Smolker" followed by a stylized flourish.

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**IN THE UNITED STATES BANKRUPTCY COURT  
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In re: ) Chapter 11  
W. R. Grace & Co, et al. ) Case No. 01-01139 (AMC)  
Reorganized Debtors. ) (Jointly Administered)  
 ) Hearing date: March 4, 2021, 12:00 p.m.  
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 ) Docket Nos. 33154 and 33163

**LIST OF ADDITIONAL EXHIBITS IN OPPOSITION TO GRACE'S  
MOTION FOR SUMMARY JUDGMENT  
SMOLKER SEEKS LEAVE TO FILE IN SMOLKER'S MOTION FOR  
LEAVE TO FILE ADDITIONAL PLEADINGS AND EXIBITS IN  
OPPOSTION TO GRACE'S MOTION FOR SUMMARY JUDGMENT  
PURSUANT TO RULE 56 (d), Rule 6 (b)(1)(B), Rule 6 (c)(1) and Rule 6 (c)(2)  
of Federal Rules of Civil Procedure**

EXHIBIT NUMBER	DESCRIPTION OF EXHIBIT
18	Jury Trial Exhibit 2 (Large Diagram of Respiratory Track
19	Jury Trial Exhibit 3 (Large Diagram of Particle Size)
20	12/05/01 Jury Trial Minute Order (James Stanley Smith, Jr. is sworn and testifies for cross-complainants)
21	12/06/01 Jury Trial Minute Order (John Cervantes, Jeff Humphreys, and Gregory Adams testify for cross-complainants; Notice of Violations and Cease and Desist Orders are Marked for Identification Only as Exhibit 10 and Exhibit 12)
22	12/07/01 Jury Trial Minute Order (Cross-defendants' Motion for Mistrial is heard, argued and denied.)

23	12/07/01 Jury Trial Minute Order (Bruce Edwards and Peter Novak are sworn and testify for cross-complainants.)
24	12/10/01 Jury Trial Minute Order (Dr. Nathan Brautbar is sworn and testifies for cross-complainants.
25	12/11/01 Jury Trial Minute Order (Court declares mistrial.)

Dated: January 14, 2021 Submitted by Claimant Gary S. Smolker, In Pro Per



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Gary S. Smolker  
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Encino, CA. 91436

### **DECLARATION OF GARY SMOLKER**

I, Gary Smolker, declare:

I make each of the following statements on my own personal knowledge.

Each of the attached Exhibits is a true and correct copy of what it purports to be.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Gary Smolker", with a stylized flourish at the end.

Dated: January 14, 2021

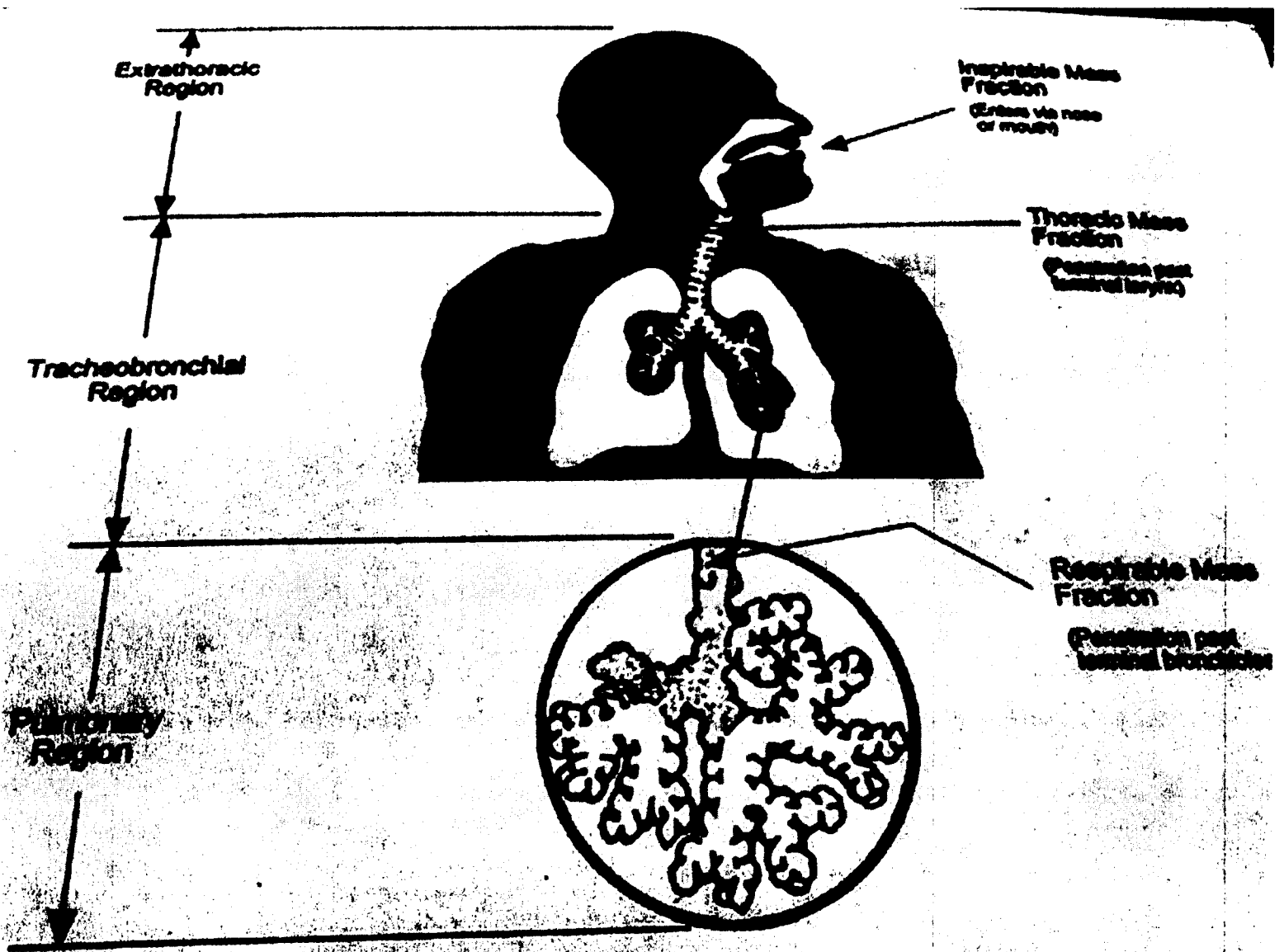
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Gary Smolker

# **EXHIBIT**

# **18**

**Jury Trial Exhibit 2**  
(Large Diagram of Respiratory Track)

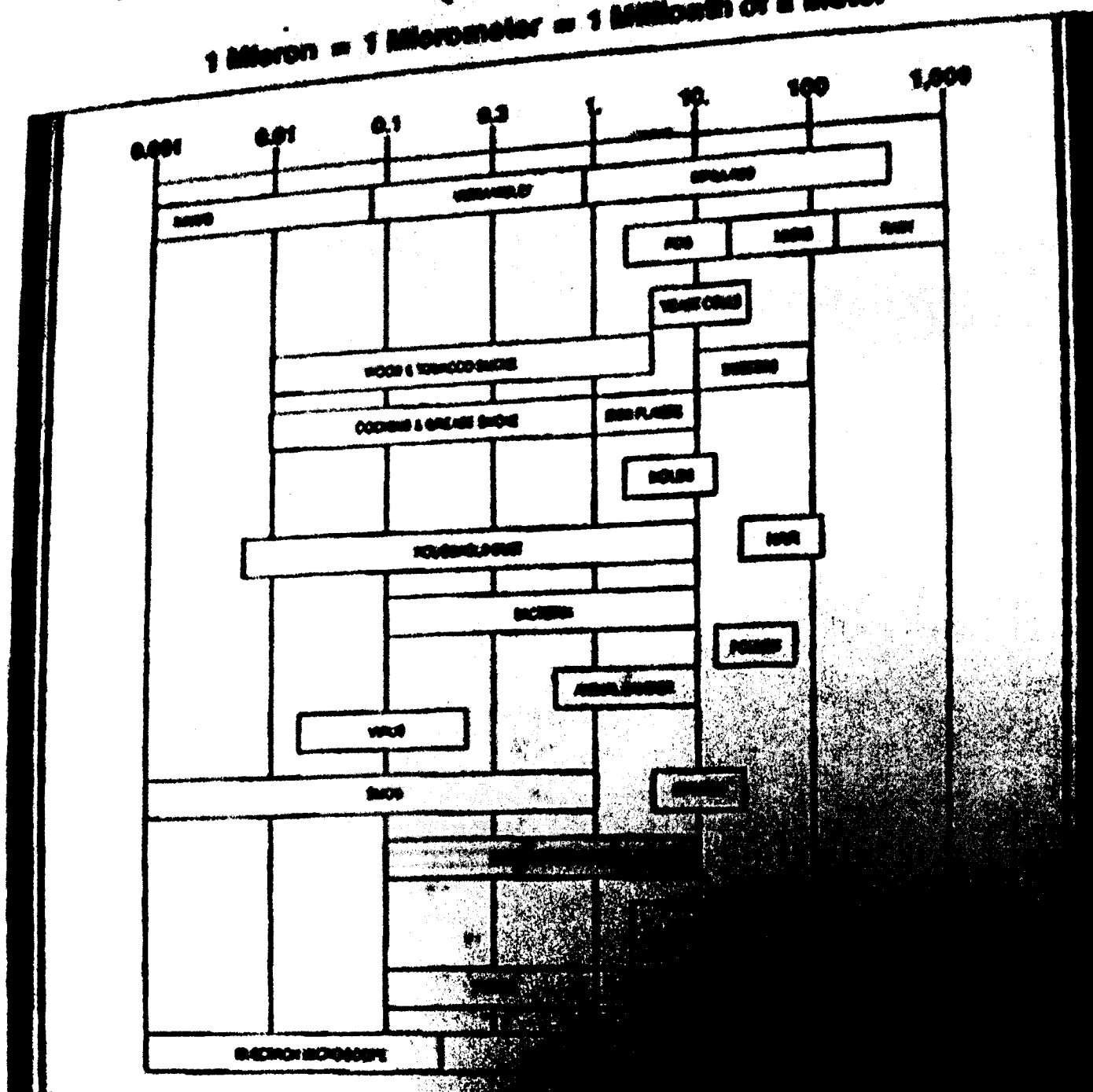


# **EXHIBIT**

# **19**

**Jury Trial Exhibit 3**  
(Large Diagram of Particle Size)

**1 Micron = 1 Micrometer = 1 Millionth of a Meter**



### Source: Student Research Institute

**M** Measuring the tiny particles in air requires an equally tiny measure. The micron, equal to one-millionth of an inch, is the unit of measurement used. It is so small that about 400 would fit in the "i" in the word micron.

# **EXHIBIT**

# **20**

**12/05/01 Jury Trial Minute Order**  
(James Stanley Smith, Jr. is sworn and testifies  
for cross-complaints)



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/05/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE R. AQUINO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE, #1377

L. NISHIMOTO, #9147

Reporter

9:00 am

BC173952

Plaintiff ALICE GRAHAM (X)

Counsel GARY SMOLKER (X)

TIG INSURANCE COMPANY

Defendant

VS

Counsel GARY YARDUMIAN (X)

GARY SMOLKER ET AL

WILLIAM HAKE (X)

170.6 - Rothschild 12-19-97

## NATURE OF PROCEEDINGS:

JURY TRIAL

AO

Trial resumes from December 4, 2001 with all jurors and parties present as heretofore.

## OUT OF THE PRESENCE OF THE JURY:

Cross-defendant's motion to exclude witnesses is granted.

Court and counsel discuss cross-complainant's proposed exhibits as no exhibit list has been provided to court and opposing counsel.

## IN THE PRESENCE OF THE JURY:

James Stanley Smith, Jr. is sworn and testifies for the cross-complainants.

Cross-complainants' exhibits 2 (large diagram of respiratory tract), 3 (large diagram of particle size), and 7 (dri-out insecticide use label) are marked for identification only.

Cross-defendant's exhibits 4 (2-paged article), 5 (collective set of 3 invoices), 6 (4B of Dr. Smith's deposition) and 8 (HSTC safety data sheet) are marked for identification only.

## OUT OF THE PRESENCE OF THE JURY:

Court and counsel confer and argue regarding testimony

# EXHIBIT

# 21

**12/06/01 Jury Trial Minute Order**

(John Cervantes, Jeff Humphreys and George Adams testify for cross-complaints; Notice of Violations and Cease and Desist Orders are Marked for Identification Only as Exhibit 10 and Exhibit 12)

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/06/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE

R. AQUINO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE, #1377

L. NISHIMOTO, #9147

Reporter

9:30 am BC173952

TIG INSURANCE COMPANY

Plaintiff ALICE GRAHAM (X)

Counsel GARY SMOLKER (X)

Defendant

Counsel GARY YARDUMIAN (X)

WILLIAM HAKE (X)

VS  
GARY SMOLKER ET AL

170.6 - Rothschild 12-19-97

## NATURE OF PROCEEDINGS:

JURY TRIAL

AO

Trial resumes from December 5, 2001 with all jurors and parties present as heretofore.

## OUT OF THE PRESENCE OF THE JURY:

Court and counsel confer regarding the court's rulings as to cross-defendant's cross-examination of witness Dr. Smith.

Motions in limine are heard and argued, details of which are reflected in the notes of the court reporter.

## IN THE PRESENCE OF THE JURY:

John Cervantes and Jeff Humphreys are sworn and testify for the cross-complainants.

Cross-complainants read in open court the deposition of Corey Ray Arentz taken February 5, 1998 and February 10, 1998.

Gregory Adams and John Lausevic are sworn and testify for the cross-complainants.

Cross-complainants' exhibits 9 (Monthly pesticide use reports, collectively), 10 (Notice of violation cease and desist order), 11 (Job worksheet), 12 (Notice of violation cease and desist order),

# **EXHIBIT**

# **22**

**12/07/01 Jury Trial Minute Order**  
(Cross-defendants' Motion for Mistrial is heard,  
argued and denied.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 12/07/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE R. AQUINO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE

Reporter

9:30 am BC173952

Plaintiff ALICE GRAHAM (X)  
Counsel GARY SMOLKER (X)

TIG INSURANCE COMPANY

Defendant  
Counsel GARY YARDUMIAN (X)  
WILLIAM HAKE (X)

VS  
GARY SMOLKER ET AL

170.6 - Rothschild 12-19-97

**NATURE OF PROCEEDINGS:**

A hearing pursuant to section 402 of the Evidence Code is conducted on the record, details of which are fully reflected in the notes of the court reporter.

IN THE PRESENCE OF THE JURY:  
Alice Graham Smolker is sworn and testifies on her own behalf.

The jury is admonished and ordered to return on December 10, 2001 at 9:30 am in Department 15.

OUT OF THE PRESENCE OF THE JURY:  
Court and counsel confer re admission of exhibits. Cross-complainants' exhibits 18, 14A, 14B, 15A, 15B, 17A, and 17B, previously marked for identification, are admitted in evidence by stipulation of counsel.

Cross-defendant's oral motion for a mistrial is heard, argued, and denied.

Counsel are ordered to return on December 10, 2001 at 9:30 am in this department.

# **EXHIBIT**

# **23**

**12/07/01 Jury Trial Minute Order**  
**(Bruce Edwards and Peter Novak are sworn and**  
**testify for cross-complaints.)**

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/07/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE

R. AQUINO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE

Reporter

9:30 am

BC173952

Plaintiff

ALICE GRAHAM (X)

Counsel

GARY SMOLKER (X)

TIG INSURANCE COMPANY

Defendant

VS

Counsel

GARY YARDUMIAN (X)

GARY SMOLKER ET AL

WILLIAM HAKE (X)

170.6 - Rothschild 12-19-97

## NATURE OF PROCEEDINGS:

JURY TRIAL

AO

Trial resumes from December 6, 2001 with all jurors and parties present as heretofore.

OUT OF THE PRESENCE OF THE JURY:  
Court and counsel confer regarding absence of cross-complainants' exhibit list, as well as scheduling of witnesses.

IN THE PRESENCE OF THE JURY:  
Bruce Edwards and Peter Novak are sworn and testify for the cross-complainants.

Cross-complainants resume reading the deposition of Corey Ray Arentz in open court.

Cross-complainants' exhibits 18 (the Patent), 14A (Dri-One specimen label, page 1), 14B (Dri-One specimen label, page 2), 15A (Dri-die specimen label, page 1), 15B (Dri-die specimen label, page 2), 17A (Dri-out insecticide label, page 1), 17B (Dri-Out insecticide label, page 2), 19 (photocopy of HSTC brochure), 20 (Quicken-list of expenses), 21 (photo taken 7-9-99), 22A (photo of sculpture and cactus), and 22B (photo of sculpture and cactus) are marked for identification only.

OUT OF THE PRESENCE OF THE JURY:

Page 1 of 2 DEPT. 15

<b>MINUTES ENTERED</b> 12/07/01 COUNTY CLERK
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# **EXHIBIT**

# **24**

**12/10/01 Jury Trial Minute Order**  
(Dr. Nathan Brautbar is sworn and testifies for  
cross-complaints.)



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/10/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE

R. AQUINO (AM ONLY)

E. HOLLOWAY (PM ONLY) DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE, CSR# 1377

D. SHELLEY, CSR# 10177

Reporter

9:30 am BC173952

Plaintiff GARY SMOLKER (X)

Counsel ALICE GRAHAM (X)

TIG INSURANCE COMPANY

Defendant

VS

Counsel GARY YARDUMIAN (X)

GARY SMOLKER ET AL

WILLIAM HAKE (X)

170.6 - Rothschild 12-19-97

## NATURE OF PROCEEDINGS:

JURY TRIAL

AO

Trial resumes from December 9, 2001 with all jurors and parties present as heretofore.

## OUT OF THE PRESENCE OF THE JURY:

Court and counsel confer re cross-defendant's motion re limited testimony of Dr. Brautbar.

## IN THE PRESENCE OF THE JURY:

Nachman Brautbar is sworn and testifies for the cross-complainants.

Cross-complainants' exhibits 23 (letter of cross-complainant to Dr. Brautbar), 24 (medical questionnaire), 25 (laboratory report dated 9-24-97), 26 (document re lung capacity testing), 27 (medical report from Dr. Fried), 28 (medical reports from Dr. Golitsky), 29 (appointment form), 30 (blood test report), 31 (lung test result), 32 (report dated 5-11-99), 33 (set of documents dated 6-14-99), 34 (test reports dated 4-4-00), 35 (report dated 4-9-98), 36 (statement dated 8-10-01), 37 (challenge report dated 12-3-97), 38 (copy of check dated 6-30-98), 39 (schedule of fees dated 6-30-98), 40 (progress record), 41 (Cedars Sinai medical report), 41B (blow up version of 41), 42 (4-letter page dated 4-6-96), 43 (billing report), 43B (blow up of 43), 44 (letter dated 12-4-97), 45A through 45F

# **EXHIBIT**

# **25**

**12/11/01 Jury Trial Minute Order**  
(Court declares mistrial.)

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/11/01

DEPT. 15

HONORABLE Richard Fruin

JUDGE

R. AQUINO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BARRIOS, C.A.

Deputy Sheriff

G. LEVINE, #1377

D. SHELLEY, #10177

Reporter

9:30 am

BC173952

Plaintiff GARY SMOLKER (X)

Counsel ALICE GRAHAM (X)

TIG INSURANCE COMPANY

Defendant

VS

Counsel GARY YARDUMIAN (X)

GARY SMOLKER ET AL

WILLIAM HAKE (X)

170.6 - Rothschild 12-19-97

## NATURE OF PROCEEDINGS:

JURY TRIAL

AO

Trial resumes from December 10, 2001 with all jurors and parties present as heretofore.

Wayne Morris is sworn and examined pursuant to section 776 of the Evidence Code.

Cross-complainants' exhibits 50 (packing slip), 51 (W.R. Grace MSDS dated 10-1-92), 52 (W.R. Grace MSDS dated 4-8-92), 53 (old version of HSTC information pamphlet), and 54 (an article) are marked for identification only.

## OUT OF THE PRESENCE OF THE JURY:

Court and counsel confer re estimated completion of trial.

## IN THE PRESENCE OF THE JURY:

The court informs the jury panel that the trial will not be completed within the time frame initially set by the court. As a result, the court declares a mistrial.

The jury is thanked and discharged.

The court, however, proposes that the jury hear abbreviated closing arguments and issue an advisory opinion. All 14 jurors agree to participate in this

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Case No. 01-01139 (AMC) (Jointly Administered)

I am a resident of the State of California, over the age of eighteen years, and not a party to this action. My business address is 16055 Ventura Blvd., Suite 525, Encino, CA 91436. On January 14, 2021, I served the following titled and attached documents:

**GARY S. SMOLKER'S NOTICE OF MOTION AND MOTION**

**GARY S. SMOLKER'S LIST OF LEGAL ISSUES**

**GARY S. SMOLKER'S LIST OF EXHIBITS**

  X   VIA MAIL, by placing a true copy of the document(s) listed above in a sealed envelope with postage fully prepaid in United States mail in the State of California, at Encino, California, addressed as set forth below:

Law Offices of Roger Higgins, LLC, Attention Roger Higgins, Esq., 561 North Ogden Ave. , Suite 136, Chicago, Illinois 61642

Pachulski Stang Ziehl & Jones, LLP 919 North Market Street, 17<sup>th</sup> floor,  
Wilmington, Delaware, 19899-8705

ORIGINAL SENT FOR FILING TO THE UNITED STATES BANKRUPTCY  
COURT FOR THE DISTRICT OF DELAWARE VIA FEDERAL EXPRESS  
OVERNIGHT MAIL

United State Bankruptcy Court

Office of the Clerk

824 Market Street

Wilmington, Delaware 19801

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on January 14, 2021, at Encino, California.

A handwritten signature in black ink, appearing to be 'Lauren Elder', is written above a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.

Lauren Elder